

BEFORE THE DIVISION OF INSURANCE

STATE OF COLORADO

Order No. O-13-014

FINAL AGENCY ORDER

IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF STEWART
TITLE GUARANTY COMPANY

Respondent

THIS MATTER comes before the Colorado Commissioner of Insurance ("Commissioner") as a result of a market conduct examination ("MCE") conducted by the Colorado Division of Insurance ("Division") of Stewart Title Guaranty Insurance Company ("Respondent"), pursuant to §§ 10-1-203, 10-1-204, and 10-1-205, as well as § 10-3-1106, C.R.S.

The Commissioner has fully considered and reviewed the Verified MCE Report ("Report") dated July 24, 2012, the written submissions and rebuttals provided August 17, 2012, by Respondent in response to the Report, and the recommendations of staff.

The Report covers the examination period of July 1, 2010, through June 30, 2011.

The Commissioner makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. At all relevant times during the examination, the Respondent was licensed by the Division to conduct business as a title insurer in the State of Colorado.
2. On July 24, 2012, in accordance with §§ 10-1-201, 10-1-203, 10-1-204, and 10-1-205, as well as § 10-3-1106, C.R.S., the Division completed an MCE of the Respondent. The period of examination was July 1, 2010, through June 30, 2011.
3. In conducting the MCE, the examiners observed those guidelines and procedures set forth in the 2011 Market Regulation Handbook adopted by the National Association of Insurance Commissioners.
4. The MCE was completed on July 24, 2012. Pursuant to § 10-1-205(2) the market conduct examiners prepared the Report, which the Examiner-in-Charge timely filed

with the Division, under oath, on July 24, 2012. The Report was subsequently timely transmitted to Respondent on July 24, 2012.

5. On July 24, 2012, the Division provided the Respondent with written notification that it was afforded a right to file, within thirty (30) days, written submissions or rebuttals with respect to any matter contained in the Report.
6. Pursuant to § 10-1-205(1), C.R.S., the Report is comprised of only the facts appearing upon the books, records, or other documents of the Respondent, its agents or other persons who were examined concerning Respondent's affairs. The Report contains the conclusions and recommendations that the examiners find reasonably warranted based upon the facts.
7. On August 17, 2012, Respondent timely filed its written submission and rebuttal to the Report as provided for at § 10-1-205(2), C.R.S.
8. The Commissioner has fully considered and reviewed the Report, Respondent's August 17, 2012, submission and rebuttal to the Report, and the recommendations of staff.
9. The MCE has proceeded under the substantive terms, authority and procedures set forth at §§ 10-1-203, 10-1-204 and 10-1-205, C.R.S., as well as § 10-3-1106, C.R.S.

CONCLUSIONS OF LAW AND ORDER

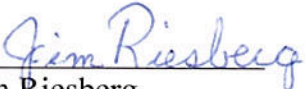
10. Pursuant to § 10-1-205(3)(a), C.R.S., the Commissioner adopts the Report as filed.
11. The Commissioner finds the Respondent operated in violation of Colorado insurance law and hereby orders the Respondent to take necessary and appropriate action, as set forth herein, to cure such violations.
12. The Commissioner considered the options available under § 10-1-205(3)(b) and (c), C.R.S. After such consideration the Commissioner did not reject the Report or direct the examiners to reopen the examination for the purposes of obtaining additional data, documentation, or information, or to refile the Report pursuant to subsection (1) of § 10-1-205, C.R.S. The Commissioner finds an investigatory hearing, pursuant to § 10-1-205(3)(c), C.R.S., for the purposes of obtaining additional documentation, data, information, and testimony, is not warranted.
13. A copy of the Report is attached to the Final Agency Order and is incorporated herein. The July 24, 2012, Report provided Respondent with the opportunity to show cause as to why it should not be found in violation of the Colorado insurance laws and/or regulations for all issues identified below. Respondent provided its submission and rebuttal on August 17, 2012. The Respondent was required to cure the violations set forth below in the time frame and manner set forth below.

14. Issue A1: Failure, in some instances, to provide an anti-fraud statement as required by Colorado insurance law. This failure constitutes a violation of § 10-1-128, C.R.S. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised its processes and fully implemented procedures to ensure that all title insurance policies, applications or claim forms include the required verbiage regarding fraudulent acts and penalties, as required by Colorado insurance law.
15. Issue F1: Failure, in some instances, to charge rates in accordance with the rates on file with the Commissioner. This failure constitutes a violation of § 10-11-118, C.R.S. and Colorado Insurance Regulation 3-5-1. The Respondent was required to provide written evidence to the Division that it had revised its processes and fully implemented procedures to ensure that all title policy and endorsement charges are consistent with filed rates as required by Colorado insurance law. The Division's records indicate that the Respondent has implemented training measures of agents and is in the process of implementing advanced rate calculators and a new software system, which if fully implemented, appear to comply with the corrective actions ordered concerning this violation.
16. Issue G1: Failure, in some instances, to provide evidence that specific coverage exceptions had been disclosed. This failure constitutes a violation Colorado Insurance Regulation 3-5-1. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised its processes and fully implemented procedures to ensure that specific coverage exceptions are disclosed with each title commitment issued for an owner's title insurance policy, when it is determined specific coverage exceptions are required, as required by Colorado insurance law.
17. Issue G2: Failure to obtain a certificate of taxes due or written instructions eliminating the requirement from the proposed insured. This failure constitutes a violation of § 10-11-122, C.R.S. and Colorado Insurance Regulations 1-1-7 and 3-5-1. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised its processes and fully implemented procedures to ensure that a certificate of taxes due, or instructions eliminating the requirement, is obtained and retained prior to the issuance of the title policy, as required by Colorado insurance law.
18. Issue G3: Failure, in some instances, to provide evidence that the privacy disclosure had been provided. This failure constitutes a violation of Colorado Insurance Regulations 3-5-1 and 6-4-1. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall to provide written evidence to the Division that it has revised its processes and fully implemented procedures to ensure that the privacy disclosure is provided as required by Colorado insurance law.

19. Issue G4: Failure, in some instances, to provide evidence of an update of the title commitment, when the Company's agent provided closing and settlement services, in conjunction with the issuance of an owner's policy of title insurance. This failure constitutes a violation of Colorado Insurance Regulation 3-5-1. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised its processes and fully implemented procedures to ensure evidence of an update to the commitment, where the Company's agent provided closing and settlement services in conjunction with the issuance of an owner's policy of title insurance, as required by Colorado insurance law.
20. Issue G5: Failure, in some instances, to remit premiums within the required contractual time period. This failure constitutes a violation of § 10-2-704, C.R.S., and Colorado Insurance Regulation 3-5-1. The Respondent was required to provide written evidence to the Division that it had revised its processes and fully implemented procedures to ensure timely remittance of premium, as required by Colorado insurance law. The Division's records indicate that the Respondent is in the process of implementing a new software system, which if fully implemented, appears to comply with the corrective actions ordered concerning this violation.
21. Issue G6: Failure, in some instances, to report to the Commissioner any remittance that exceeded forty-five (45) days beyond the contractual due date. This failure constitutes a violation of § 10-2-704, C.R.S., and Colorado Insurance Regulation 3-5-1. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised its processes and fully implemented procedures to ensure any remittance of premium that exceeds forty-five (45) days from the contractual due date is promptly reported to the Commissioner, as required by Colorado insurance law.
22. The issues and violations described in paragraphs 14 through 21 above are grounds for penalties to be levied pursuant to § 10-1-205(3)(d), C.R.S. The Commissioner has ordered a civil penalty in the amount of ninety-five thousand and no/100 dollars (\$95,000.00) for the cited violations of Colorado law. However, the Commissioner hereby stays \$31,000.00 of the \$95,000.00 civil penalty based upon documentation of corrective actions initiated prior to and during the examination, investment in system enhancements initiated prior to the examination, and the Company's cooperation and acceptance of responsibility. The stayed portion of the civil penalty shall become due and payable if the Division subsequently determines that the Respondent is not in complete compliance with all corrective actions included in this Final Agency Order. The remaining \$64,000.00 penalty shall be assessed a surcharge of 10% of the penalty amount up to a maximum of \$7,500.00, pursuant to § 24-34-108, C.R.S., for a total balance due of seventy thousand four hundred dollars (\$70,400.00). The surcharge shall be used to fund the development, implementation and maintenance of a consumer outreach and education program. The penalty and surcharge shall be due to the Division no later than thirty (30) days from the date of this Final Agency Order.

23. Pursuant to § 10-1-205(4)(a), C.R.S., within sixty (60) days of the date of this Final Agency Order, the Respondent shall file affidavits executed by each of its directors stating under oath that they have received a copy of the Report adopted by this Final Agency Order, dated September 5, 2012.
24. This Final Agency Order shall not prevent the Division from commencing future agency action relating to conduct of the Respondent not specifically addressed in the Report, not resolved according to the terms and conditions in this Final Agency Order, or occurring before or after the examination period. Failure by the Respondent to comply with the terms of this Final Agency Order may result in additional actions, penalties and sanctions, as provided for by law.
25. Notwithstanding the foregoing, the Division plans to conduct a follow-up market conduct examination of Respondent's title business to verify the effectiveness of Respondent's corrective actions in achieving compliance with Colorado law. Such follow-up market conduct examination shall not commence before January 1, 2014, and shall not include an examination period commencing before January 1, 2013. Such follow-up examination shall include, but may not be limited to: 1) accuracy of premium charges; 2) disclosure of exceptions to coverage; and 3) timely remittance of premiums.
26. Copies of the Report and this Final Agency Order will be made available to the public no earlier than thirty (30) days after the date of this Final Agency Order, subject to the requirements of § 10-1-205, C.R.S.
27. Pursuant to § 10-1-205(4)(a), C.R.S., this Final Agency Order shall be considered a final agency decision. Review of such decision may be sought in the District Court in and for the City and County of Denver and shall be governed by the "State Administrative Procedure Act," Article 4 of Title 24, C.R.S.
28. Pursuant to § 10-1-205(4)(e), C.R.S., the civil penalty assessed in this Final Agency Order may be appealed directly to the Colorado Court of Appeals within the applicable time frames of the Colorado Appellate Rules.

WHEREFORE: It is hereby ordered that the findings of fact and conclusions of law contained in the Report dated July 24, 2012, subsequently adopted by the Commissioner on September 5, 2012 are hereby filed and made an official record of this office, and the within Final Agency Order incorporating the adopted Report is hereby approved and effective this 5th day of September, 2012.


Jim Riesberg
Commissioner of Insurance

CERTIFICATE OF MAILING

I hereby certify that on the 5th day of September, 2012, I caused to be deposited the **FINAL AGENCY ORDER NO. O-13-014 IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF STEWART TITLE GUARANTY COMPANY**, in the United States Mail via certified mailing with postage affixed and addressed to:

Mr. Michael B. Skalka, President
Stewart Title Guaranty Company
PO Box 2029
Houston, TX 77252

A handwritten signature in blue ink, reading "Eleanor Coe", written over a horizontal line.

Eleanor Coe
Market Regulation Administrator
Division of Insurance